

## 37 Am. Jur. 2d Fraud and Deceit § 101

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### Fraud and Deceit

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### IV. False Representations

#### D. Matters of Law

##### 1. In General

## § 101. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Fraud](#)  10

### A.L.R. Library

[Misrepresentation by one other than insurance agent as to coverage, exclusion, or legal effect of insurance policy, as actionable, 29 A.L.R.2d 213](#)

[Avoidance of release of claim for personal injuries on ground of misrepresentation as to matters of law by tortfeasor or his representative insurer, 21 A.L.R.2d 272](#)

### Forms

[Am. Jur. Pleading and Practice Forms, Fraud and Deceit § 218](#) (Instruction to jury—Reliance on representations of law not justified)

Representations or statements concerning domestic law are not ordinarily regarded as representations of fact but rather expressions of opinion on which no action in fraud will lie even though they are false.<sup>1</sup> It is accordingly well settled, as a general rule, that fraud cannot be predicated upon misrepresentations of law or misrepresentations as to matters of law.<sup>2</sup> In other words,

claims of fraud generally cannot arise from legal opinions;<sup>3</sup> a representation of law is a statement of opinion as to what the law permits or prohibits and cannot support an action for fraud.<sup>4</sup> The rule embraces opinions on questions of law based on facts known to both parties alike<sup>5</sup> and extends to representations as to what the law requires to be done<sup>6</sup> and representations as to what the law will not permit to be done,<sup>7</sup> especially when the representations are made by the avowed agent of the adverse interest,<sup>8</sup> or when there is no confidential relationship between the parties.<sup>9</sup> There are, however, exceptions to the general rule.<sup>10</sup>

The American Law Institute takes the position that if an assertion is one as to a matter of law, the same rules that apply in the case of other assertions determine whether the recipient is justified in relying on it.<sup>11</sup>

One who does not withhold or misstate the facts cannot be adjudged guilty of fraud simply because the courts finally decide the law to be other than it was claimed it to be while litigation continued over the subject in question;<sup>12</sup> thus, a subsequent legal decision adverse to a statement or representation previously expressed as to the law cannot establish prior fraud.<sup>13</sup> In addition, generally speaking, a charge of fraud cannot be based on an honest mistake in a statement of general law.<sup>14</sup>

**Observation:**

The reasons generally advanced as the basis of the rule that fraud cannot be predicated upon misrepresentations as to matters of law are that everyone is presumed to know the law, both civil and criminal,<sup>15</sup> and is bound to take notice of it<sup>16</sup> and therefore cannot, in legal contemplation, be deceived by such misrepresentations.<sup>17</sup> The rule is sometimes based on the theory that fraud cannot be predicated upon an expression of opinion.<sup>18</sup> Hence, one has no right to rely on such representations or opinions and will not be permitted to assert being misled by them.<sup>19</sup> In spite of this general rationale, however, there is authority that a false opinion of the law, if represented as a sincere opinion, may, as any other opinion, give rise to a fraud claim if it is reasonably relied upon by the other party.<sup>20</sup>

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**Footnotes**

- 1 [Bernhan Chemical & Metal Corporation v. Ship-A-Hoy](#), 200 A.D. 399, 193 N.Y.S. 372 (1st Dep't 1922), aff'd in part, rev'd in part on other grounds, 234 N.Y. 563, 138 N.E. 447 (1922).
- 2 [Mutual Life Ins. Co. of New York v. Phinney](#), 178 U.S. 327, 20 S. Ct. 906, 44 L. Ed. 1088 (1900).
- 3 [BP America Production Co. v. Marshall](#), 288 S.W.3d 430 (Tex. App. San Antonio 2008), review granted, (Oct. 1, 2010) and judgment rev'd on other grounds, 342 S.W.3d 59 (Tex. 2011).
- 4 [Brodeur v. American Home Assur. Co.](#), 169 P.3d 139 (Colo. 2007).
- 5 [Mutual Life Ins. Co. of New York v. Phinney](#), 178 U.S. 327, 20 S. Ct. 906, 44 L. Ed. 1088 (1900); [Rice v. Ragsdale](#), 104 Ark. App. 364, 292 S.W.3d 856 (2009).
- 6 [McDonald v. Goodman](#), 239 S.W.2d 97 (Ky. 1951); [Cummins v. Robinson Twp.](#), 283 Mich. App. 677, 770 N.W.2d 421 (2009).
- 7 [Pambianchi v. Howell](#), 100 Ark. App. 154, 265 S.W.3d 788 (2007); [State v. Edwards](#), 178 Minn. 446, 227 N.W. 495, 65 A.L.R. 1253 (1929); [In re Plain State Bank](#), 217 Wis. 257, 258 N.W. 783 (1935).

- 8 Pambianchi v. Howell, 100 Ark. App. 154, 265 S.W.3d 788 (2007); Powers v. Kansas City Public Service Co., 334 Mo. 432, 66 S.W.2d 840 (1933); Traders & General Ins. Co. v. Keith, 107 S.W.2d 710 (Tex. Civ. App. Amarillo 1937), writ dismissed.  
Opinions regarding the status or interpretation of the law generally will not provide a basis for an action for fraud or misrepresentation particularly where the statements are made by a nonlawyer who is also an adverse party in a pending action. DePalantino v. DePalantino, 139 N.H. 522, 658 A.2d 1207 (1995).
- 9 Dixon v. Dixon, 211 Ga. 557, 87 S.E.2d 369 (1955); Lynch v. Dial Finance Co. of Ohio No. 1, Inc., 101 Ohio App. 3d 742, 656 N.E.2d 714 (8th Dist. Cuyahoga County 1995).
- 10 §§ 103 to 105.
- 11 Restatement Second, Contracts § 170.
- 12 Alexander v. Randall, 257 Iowa 422, 133 N.W.2d 124 (1965); Cucchiaro v. Cucchiaro, 165 Misc. 2d 134, 627 N.Y.S.2d 224 (Sup 1995).
- 13 Alexander v. Randall, 257 Iowa 422, 133 N.W.2d 124 (1965).
- 14 Glass v. Southern Wrecker Sales, 990 F. Supp. 1344 (M.D. Ala. 1998), *aff'd*, 163 F.3d 1361 (11th Cir. 1998) (applying Alabama law); Alexander v. Randall, 257 Iowa 422, 133 N.W.2d 124 (1965).
- 15 Pambianchi v. Howell, 100 Ark. App. 154, 265 S.W.3d 788 (2007); Meyer v. Santema, 1997 SD 21, 559 N.W.2d 251 (S.D. 1997); Safety Casualty Co. v. McGee, 133 Tex. 233, 127 S.W.2d 176, 121 A.L.R. 1263 (Comm'n App. 1939).
- 16 Pambianchi v. Howell, 100 Ark. App. 154, 265 S.W.3d 788 (2007); McDonald v. Goodman, 239 S.W.2d 97 (Ky. 1951); Krushew v. Meitz, 276 Mich. 553, 268 N.W. 736 (1936).
- 17 Dixon v. Dixon, 211 Ga. 557, 87 S.E.2d 369 (1955).
- 18 Agnew v. Landers, 59 N.M. 54, 278 P.2d 970 (1954).
- 19 Pambianchi v. Howell, 100 Ark. App. 154, 265 S.W.3d 788 (2007); McDonald v. Goodman, 239 S.W.2d 97 (Ky. 1951); Safety Casualty Co. v. McGee, 133 Tex. 233, 127 S.W.2d 176, 121 A.L.R. 1263 (Comm'n App. 1939).
- 20 AIU Ins. Co. v. Deajess Medical Imaging, P.C., 24 Misc. 3d 161, 882 N.Y.S.2d 812 (Sup 2009).

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